

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
Amendment of Section 73.202(b))	MB Docket No. 04-146
FM Table of Allotments,)	RM-10871
FM Broadcast Stations.)	
(Fort Rucker, Ozark and)	
Slocomb, Alabama))	

NOTICE OF PROPOSED RULEMAKING

Adopted: April 12, 2004

Released: April 14, 2004

Comments Date: June 7, 2004

Reply comments Date: June 22, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rule making filed by Styles Media Group, LLC, licensee of Station WXUS, Fort Rucker, Alabama, and Styles Broadcasting of Dothan, Inc., licensee of Station WJRL, Ozark, Alabama ("Styles"), requesting changes to the FM Table of Allotments. Styles requests the substitution of Channel 263C3 for Channel 263A and reallocation of Channel 263C3 from Fort Rucker, Alabama, to Slocomb, Alabama, and modification of the license for Station WXUS to specify operation on Channel 263C3 at Slocomb.¹ To maintain local service at Fort Rucker, Styles also requests the reallocation of Channel 280C3 from Ozark, Alabama, to Fort Rucker, Alabama, and modification of the license for Station WJRL to specify Fort Rucker as the community of license.² Styles states that applications will be filed for Channel 263C3 at Slocomb and Channel 280C3 at Fort Rucker if the reallocations are granted.

2. Styles filed the petition in accordance with the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.³ In considering a reallocation proposal, we compare the existing

¹ Although Styles' actual petition neglects to request the substitution of Channel 263C3 for Channel 263A at Fort Rucker, the attached engineering and technical statement proposes the upgrade. Therefore, we shall propose the substitution of Channel 263C3 for Channel 263A at Fort Rucker and reallocation of the channel. In comments, Styles is requested to clarify this issue.

² Fort Rucker is not an incorporated city with municipal services but a military installation. It should be noted that Channel 226A was originally allotted to Fort Rucker in Docket 84-231. See 50 FR 3514, January 25, 1985. In response to a petition filed by the United States Army Aviation Center, the *Notice of Proposed Rule Making* in MM Docket 87-618 proposed the deletion of Channel 226A at Fort Rucker. The *Report and Order* in that proceeding substituted Channel 263A for Channel 226A at Fort Rucker in response to a counterproposal and comments filed by the United States Army withdrawing its proposal to delete the channel at Fort Rucker. See *Fort Rucker and Geneva, Alabama and Blakely, Georgia*, 5 FCC Rcd 37 (MMB 1990).

³ See *Modification of FM and TV Authorizations to Specify a new Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM Allotment priorities.⁴

3. In support of the petition, Styles states that Channel 263C3 can be allotted to Slocomb, Alabama, in compliance with Section 73.207 of the Commission's Rules without a site restriction providing a first local service for the community. Styles further states that the community of Slocomb has definable boundaries with a population of 2,052 people according to the 2000 U.S. Census, has its own elected government, police and fire departments, school system for kindergarten through 12th grade, a monthly newspaper called the *Town Crier*, and its own post office and zip code (36375). Slocomb has a public library, numerous businesses and restaurants, churches and several day care centers to serve its residents. Styles states that Station WXUS, operating on Channel 263C3 at Slocomb will provide 60 dBu service to 199,922 people within a 4,802 square kilometer area which represents a net increase of 56,892 people and a gain of 2,937 square kilometers. There will be a loss of service to 8,983 people in 594 square kilometers with the area presently receiving service from a minimum of five full-time FM stations. Styles claims that Slocomb is not located in an Urbanized Area but from the proposed reference site for Channel 263C3, the 70 dBu contour would encompass 68 percent of the Dothan Urbanized Area while the station currently provides service to only 16 percent of the Urbanized Area. Styles points out that a *Tuck* analysis has been provided showing that Slocomb is independent of the Dothan Urbanized Area.⁵ Styles acknowledges that the proposal would result in the removal of the sole local operating service from Fort Rucker. In support of the removal of Station WXUS and to ensure continued local service at Fort Rucker, Styles has proposed the reallocation of Station WJRL, Channel 280C3, from Ozark, Alabama, to Fort Rucker. Ozark will continue to receive local service from Stations WAQG-FM, WOAB-FM, WOZK-AM and WQLS-AM. Styles states that Station WJRL can be reallocated to Fort Rucker in compliance with the Commission's spacing requirements at a site 15 kilometers northeast of the community.

4. We believe that the proposal warrants consideration since the reallocation could provide Slocomb with its first local aural transmission service. An engineering analysis shows that Channel 263C3 can be allotted to Slocomb at coordinates 31-06-36 and 85-35-40. The effect of Station WXUS upgrading from a Class A facility to a C3 facility will result in a new service to 57,475 people within a 2,909 square kilometer area while 9,208 people in an area of 626 square kilometers will lose their only service. However, with the reallocation of Station WJRL as a backfill station from Ozark to Fort Rucker, local service will continue to be provided to Fort Rucker. Channel 280C3 can be allotted to Fort Rucker in compliance with the Commission's Rules at coordinates 31-26-33 and 85-32-21. As requested, we shall propose to modify the license for Station WXUS to specify operation on Channel 263C3 at Slocomb, Alabama, as its new community of license. We shall also propose the modification of the license for Station WJRL to specify operation on Channel 280C3 at Fort Rucker, Alabama, in lieu of Ozark, Alabama. Additionally, in order to insure continued service at Fort Rucker, we will withhold program test authority with respect to the reallocation of Channel 263C3 from Fort Rucker to Slocomb until the activation of Channel 280C3 at Fort Rucker. Should Styles' proposal be granted, no special temporary authority will be considered for Station WXUS moving from Fort Rucker to Slocomb, if Station WJRL fails to implement its relocation from Ozark to Fort Rucker in a timely fashion.⁶ In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 263C3 at Slocomb or Channel 280C3 at Fort

⁴ The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)], *See Revision of FM Assignment Policies and Procedures*, 90 FCC2d 88, 91 (1988).

⁵ *See Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

⁶ *See Report & Order, Streamlining of Mass Media Applications*, MM Docket No. 98-43, 13 FCC Rcd 23056 (1998).

Rucker.

5. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>Community</u>	<u>Present</u>	<u>Channel</u> <u>Proposed</u>
Fort Rucker, Alabama	263A	280C3
Ozark, Alabama	280C3, 285A	285A
Slocumb, Alabama	-----	263C3

6. IT IS FURTHER ORDERED, That the Secretary Shall Send, by Certified Mail, Return Receipt Requested, a copy of this *Notice of Proposed Rule Making* to the following:

Department of the Army
United States Army Aviation Center
Office of Public Affairs
Shamrock Street, Building No. 115
Fort Rucker, Alabama 36362

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the *Appendix* before a channel will be allotted.

8. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments or counterproposals on or before June 7, 2004, and reply comments on or before June 22, 2004, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on counsel for Styles Media Group, LLC and Styles Broadcasting of Dothan, Inc., as follows:

Cary S. Tepper
Booth, Freret, Imlay & Tepper, P.C.
7900 Wisconsin Avenue, Suite 304
Bethesda, Maryland 20814-3628

9. Parties are required to file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications

Commission.

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁷

11. For further information concerning this proceeding, contact Kathleen Scheuerle, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioners constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

⁷ See *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Makings to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*. 46 FR 11549 (February 9, 1981).

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.